

VZCZCXRO1993
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DE RUEHNR #0893/01 0940956
ZNY CCCCC ZZH
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FM AMEMBASSY NAIROBI
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5340
INFO RUCNIAD/IGAD COLLECTIVE PRIORITY
RUEHDS/AMEMBASSY ADDIS ABABA PRIORITY 0014
RUEHDR/AMEMBASSY DAR ES SALAAM PRIORITY 5909
RUEHDJ/AMEMBASSY DJIBOUTI PRIORITY 5209
RUEHKM/AMEMBASSY KAMPALA PRIORITY 2736
RUEHKH/AMEMBASSY KHARTOUM PRIORITY 1987
RUEHLO/AMEMBASSY LONDON PRIORITY 2760
RUEHFR/AMEMBASSY PARIS PRIORITY 2688
RHMFISS/CJTF HOA PRIORITY

C O N F I D E N T I A L SECTION 01 OF 04 NAIROBI 000893

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FOR S, D, P, G, R, DS, DRL, AND AF A/S FRAZER FROM THE
AMBASSADOR

E.O. 12958: DECL: 04/03/2018

TAGS: PREL PGOV KDEM KE

SUBJECT: COALITION CABINET STILL NOT FORMED

REF: A. NAIROBI 798

1B. NAIROBI 824

1C. NAIROBI 855

1D. FAX TO A/S FRAZER MARCH 28

Classified By: Ambassador Michael Ranneberger for reasons 1.4 b and d.

11. (C) Summary. The failure of the two sides thus far to reach agreement on composition of a coalition cabinet threatens momentum to resolve the Kenya post-elections crisis. We have been working intensively with both sides to press for rapid agreement (see ref A which lays out U.S. engagement). Differences center on a few key ministries and on the proper size of the cabinet (see competing lists faxed per ref D). As the discussion on a cabinet drags on, the media and other observers are starting to see this as a potential "crisis," even though Kibaki and Odinga have been positive and responsible in their public statements (their supporters have not been as responsible). Kibaki continues to refer to Odinga as prime minister-designate. The Kenyan people continue to send a clear message to both leaders that they want to see a cabinet formed quickly so that the country can move forward. Kofi Annan and I coordinated on the issuance of public statements on April 2 (see texts in paras 8 and 9). Possibly as a result of this pressure, Kibaki and Odinga will meet again April 3. There may be progress as a result of that meeting but, if there is not, we recommend that the Secretary call Kibaki (and Odinga) on April 4. This can be followed by another public statement as necessary. End summary.

Sharing of Cabinet Positions

12. (C) The quick action by the Parliament to pass legislation legalizing the coalition political accord, coupled with constructive statements by President Kibaki and Raila Odinga, established positive momentum on political resolution of the post-elections crisis. Kibaki and Odinga highlighted their united front when they met together with donors on March 17 (ref C). That momentum is threatened by the inability of the two sides thus far to agree on the composition of a coalition cabinet. Since the passage of the legislation on March 18, the two sides have been talking and maneuvering regarding formation of a cabinet. Kibaki and Odinga have met several times without making much headway.

¶3. (C) There are three inter-related issues. The first and most important issue is equitable sharing of ministerial portfolios. In essence, Kibaki wants his Party of National Unity and its allies to retain most of the key ministerial positions, including Finance, Foreign Affairs, Internal Security, Defense, Justice and Constitutional Affairs, and Local Government. Kibaki is offering Odinga's Orange Democratic Party (ODM) lesser portfolios and is proposing the creation of additional ministerial positions (by dividing ministries like Roads and Public Works, for example). Odinga insists that equitable distribution of ministries means sharing of the key, most powerful ministries. Demonstrating flexibility, Odinga has, for example, indicated that if Kibaki insists on keeping Finance (Kibaki feels strongly about this since he was a former Finance Minister and closely monitors the ministry), then ODM should be given Internal Security. Both Kibaki and Odinga are under pressure from their hard-line supporters (on the one hand not to give away key jobs; on the other to demand powerful positions). Though no real progress has been made in their meetings, Kibaki and Odinga have both been careful to avoid provocative public statements. Their supporters have been less disciplined.

Two Other Issues: Size and One Contentious Personality

¶4. (C) There are two related issues. One is the size of the cabinet. When the coalition accord was signed, there were 34 ministries. Kibaki's first cabinet-sharing offer to Odinga proposed expanding this to 44. The reason he wants to do this is to be able to give Odinga half of the 44 while ensuring enough positions to accommodate all his supporters.

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Odinga has pushed back, pointing out that expanding to 44 would create a bloated government that would be both ineffective and costly. We and virtually all observers agree. Odinga could accept expansion by a few ministries (say to 36 or even 38). The other issue is whether Kibaki will seek to reject the naming of William Ruto as a cabinet minister. Kibaki's people have started talking about the need for a "clean cabinet" (which is pretty outrageous when one considers the checkered history of some of the current ministers). Ruto is a key ODM leader who was crucial to the support the ODM received in Rift Valley and must be given a position. Kibaki's Kikuyu group accuses Ruto of having organized the Rift Valley violence against the Kikuyus; Ruto also has a court case pending against him for alleged corruption. He has not, however, been charged with supporting violence and has not been convicted of anything. There is no technical or legal basis for refusing to allow him to become a minister. Not allowing Ruto to participate in the government would be a potential deal-breaker, given Ruto's importance to the ODM.

Public Statements of Annan and Ambassador

¶5. (C) Ref A laid out our approach to support implementation of the coalition agreement, including the formation of a cabinet. I have made clear the continuing strong interest of the Secretary and President in seeing the agreement fully implemented. My team and I have been intensively engaged with both sides to push for rapid agreement on a coalition cabinet. I have been in close touch with Kofi Annan, who has also been in close contact with Kibaki, Odinga, and their teams by phone from New York and Geneva. Annan and I coordinated on the issuance of our public statements on April ¶2. The text of my remarks is at para 8; the text of Annan's statement is at para 9. The two were given prominent headline coverage in all media.

Possible Call from the Secretary

17. (C) Possibly as a result of this pressure, Kibaki called Odinga for another meeting today, April 3. Odinga had made clear that he would not participate in a meeting unless there would be a reasonable prospect of progress, so we are hopeful. If this meeting does not yield significant results, then we recommend that the Secretary call Kibaki (and Odinga) to press him to demonstrate the necessary flexibility to reach a deal. The calls could be followed, as necessary, with another public statement.

Ambassadors April 2 Public Remarks

18. (U) Begin text of Ambassador's remarks --

Remarks to Kenyan Media at the EMR) April 02, 2008

Thank you all for coming. I wanted to take this opportunity to talk about the views of the United States regarding the current political situation in Kenya, particularly with respect to the formation of a coalition government.

As we all know, this country went through a profound trauma during the crisis that affected various parts of the country in the wake of the elections. We strongly supported a political solution to that crisis. The Kenyan people made their voices heard and the pressure they placed on their leaders brought about that solution. We, as partners and friends of Kenya, were able to help. It is in that sphere of partnership and friendship with the country, with which we share important mutual interests, that I talk today.

In the wake of signing the political agreement President Kibaki and Raila Odinga came forward and sent a very clear, positive message to the nation about the importance of this agreement in forming this coalition government, and they acted quickly to then present the proper legislation to

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parliament. The messages that they gave in parliament statements that they made were extraordinarily positive. It was the first time in Kenya's history that a sitting president participated in a debate of the parliament, so a clear message was sent and that was extremely positive. Their actions also helped to give the Kenyan people a sense of hope and purpose that the country was on the road to recovery in every sense.

There was a strong expectation that following the passing of that legislation in parliament that there would be a rapid formation of a coalition government and it has not happened as quickly as some people wanted. There is a temptation to read into this crisis, that the process of forming this coalition government has taken too long. Once again the Kenyan people are sending a strong message to their leaders on both sides that enough is enough. There has been a chance for consultation; now let's form the government. Let's put personalities aside in the interest of the nation once again.

We are in close touch with President Kibaki and Prime Minister-designate Odinga and both have assured us of their commitment to make this work. We do know that working out the details of a coalition government will not be an easy process obviously) we are talking of sharing positions but the legislation passed by parliament is very clear. There is no ambiguity. It says there should be an equitable sharing of portfolios of the government based on the relative strength of the parties in parliament. That's absolutely clear so it is clear what needs to be done.

The other issue that has been discussed is the size of the government. Obviously there will be the sharing of

ministries. As most people know when political parties come together to decide. There were 34 ministerial portfolios when the agreement was signed. In our view that may not be the final number but it's a good number. Certainly the talk of 40 to 44 ministerial portfolios seems excessive. I think the Kenyan people would see that as a bloated government. We are not trying to dictate what the exact number should be. That's for the two sides to negotiate, but we have a situation where the country needs a tremendous amount of support to achieve economic recovery, to settle displaced people back in their homes, rebuilding infrastructure -- and trust. All of this is going to cost a lot of money.

A couple of weeks ago the government issued an appeal for 31 billion shillings to support the reconstruction and resettlement. We have already pledged \$25 million of support but we want to see that money used in support of the needs of the Kenyan people.

Again the main issue is about sharing portfolios. There is discussion about who is going to get finance who is going to get internal security. What equitable sharing means is obvious. It means that the most important portfolios need to be shared, that the various responsibilities of the government need to be shared fully to reflect the will of the Kenyan people, and to make this country an even stronger democracy with an even stronger economy.

One thing we've said is that we've been impressed with the way the Kenyan people kept their democracy on track. It is actually a model for many other countries. Most other countries, faced with this kind of trouble would have fallen into chaos or civil war. That did not happen here so it's something we are very positive about.

We remain positive about Kenya's future and confident that the coalition government will be formed soon and will work effectively. I want to be clear that our future relationship with Kenya is very much related to the successful composition of the coalition government and full implementation of the political accord.

End text.

Annan's April 2 Public Statement

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¶9. (U) Begin text of Annan's statement.

Statement from H.E. Kofi Annan, The Chair of the African Union Panel of Eminent Personalities

Mr. Annan is seriously concerned by the failure to compose and announce the coalition government. Mr. Annan draws the attention of the two signatories, President Mwai Kibaki and Honorable Raila Odinga, to spirit and letter of the National Accord and Reconciliation Agreement: namely, that the situation of the country dictates a coalition government in which the two parties, i.e. Government/PNU and ODM will be equal partners. The cabinet will be shared equally with appropriate portfolio balance, thus enabling each party to see itself as playing an equal role with the other partner.

Mr. Annan calls on both leaders to implement both the spirit and letter of the agreement signed and to resolve the issue of the number and composition of the government expeditiously, since the main elements for concrete decisions already feature in the agreement.

The two principals should assume fully their joint responsibility and come to definite decisions for the sake of the Kenyan nation. He hopes that the Kenyan people will not be kept in suspense for much longer.

End text.
RANNEBERGER